SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 37

THE BRITISH-AMERICAN OIL PRODUCING COMPANY, A CORPORATION,

Petitioner,

vs.

THE BOARD OF EQUALIZATION of the State of Montana, and JAMES H. STEWART, JOHN J. GREENE, and SAM D. GOZA, members of the State Board of Equalization of the State of Montana,

Respondents.

THE BLACKFEET INDIAN TRIBE,

Intervener.

PETITION FOR REHEARING

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

COMES NOW the British-American Oil Producing Company, petitioner, and petitions this Honorable Court

for a rehearing herein and as grounds for such rehearing respectfully shows:

A.

The Supreme Court in its decision concludes "that the lease was given under the special provision in the Act of June 30, 1919, taken in connection with the general provisions. The Act of May 29, 1924, is one of the general provisions, and in it Congress assents to taxation by the State of the production of oil and gas through a lease given under its provisions."

B.

The conclusion of the Court that the lease was given under the special provision in the Act of June 30, 1919, is in accord with petitioner's contentions herein. The conclusion that the Act of May 29, 1924, is a general provision and is applicable is contrary to petitioner's contentions, and is erroneous for the following reasons:

1. The Act of May 29th, 1924 (43 Stat. 242), both by title and context, refers specifically to and is restricted by the provisions of the proviso to Section 3 of the Act of February 28th, 1891.

The proviso to Section 3 of the Act of February 28th, 1891, is a part of a general allotment Act (26 Stat. 794).

The general allotment Act of February 28th, 1891, was superseded so far as concerns the Blackfeet Tribe and Reservation by the Agreement of September 28th, 1895 (29 Stat. 355), leaving effective, however, the proviso to Section 3 having reference to the leasing of unallotted lands.

From February 28th, 1891, to June 30th, 1919, therefore, unallotted lands on the Blackfeet Reservation were leased for grazing and mining purposes under the proviso to Section 3 of the Act of February 28th, 1891.

2. On June 30th, 1919, the Congress passed a new allotment Act, specifically providing for allotments on the Blackfeet Reservation and further providing "that any and all minerals, including coal, oil and gas, are hereby reserved for the benefit of the Blackfeet Tribe of Indians until Congress shall otherwise direct, and patents hereafter issued shall contain a reservation accordingly; Provided, that the land containing such minerals may be leased under such rules and regulations and upon such terms and conditions as the Secretary of the Interior may prescribe." (41 Stat. 17.)

The Act of September 20th, 1922 (42 Stat. 857), further specifically provides for the leasing of unallotted lands reserved from allotment on the Blackfeet Reservation. Its provisions are as follows:

"That lands reserved for school and agency purposes and all other unallotted lands on the Fort Peck and Blackfeet Reservations, in the State of Montana, reserved from allotment or other disposition, may be leased for mining purposes under regulations prescribed by the Secretary of the Interior."

As concerns the Blackfeet Reservation, the Acts of June 30th, 1919, and September 20th, 1922, clearly supersede, and are in conflict with the leasing provisions contained in the proviso to Section 3 of the Act of February 28th, 1891. Such proviso required the lease to be authorized by the tribal council. No such requirement appears either in the Act of June 30th, 1919, or in the Act of

September 20th, 1922. The proviso to the Act of February 28th, 1891, limits the term of the lease to ten years. No such limitation appears in either the Act of June 30th, 1919, or the Act of September 20th, 1922. The proviso to the Act of February 28th, 1891, requires the recommendation of the agent in charge of the reservation. No such provision appears in either the Act of June 30th, 1919, or the Act of September 20th, 1922. The proviso to the Act of February 28th, 1891, provides for the approval of the lease by the Secretary of the Interior. No such provision appears in either the Act of June 30th, 1919, or the Act of September 20th, 1922. Under the latter Act, the lease may be given without the consent of the tribal council, for such term, and upon such conditions, as the Secretary of the Interior may prescribe.

Under the Acts of June 30th, 1919, and September 20th, 1922, the Secretary of the Interior is given large discretion with respect to the propriety, the term, and the conditions of the lease. Under the Acts of February 28th, 1891, and May 29th, 1924, his only discretion is that of approval. The provisions for leasing found in the Act of June 30th, 1919, and September 20th, 1922, are no more meager or wanting in detail than those found generally in Indian leasing statutes:

See:

Act of March 3, 1921 (41 Stat. 1232);
Act of May 16, 1916 (39 Stat. 128);
Act of May 31, 1900 (31 Stat. 229);
Act of March 3, 1909 (35 Stat. 783);
Act of April 28, 1924 (43 Stat. 111);
Act of June 25, 1910 (36 Stat. 856);

all of which provide for the leasing of allotted and unallotted lands for various purposes in conformity with such rules and regulations as the Secretary of the Interior may prescribe.

Where, as here, there are later enacted specific provisions relating to the leasing of unallotted lands on the Blackfeet Reservation for mineral purposes, such specific provisions supersede the general provisions of the proviso to Section 3 of the Act of February 28th, 1891. See Townsend v. Little, 109 U. S. 504, 27 L. Ed. 1012; State v. Mills, 81 Mont. 86, 261 Pac. 885; Reagan v. Boyd, 59 Mont. 453, 197 Pac. 832. This was inferentially determined by the decision of this Court in the present case, when it concluded that the lease was given under the special provision in the Act of June 30th, 1919.

3. By its title, the Act of May 29th, 1924, relates only to the leasing of unallotted lands *"affected by the proviso to Section 3 of the Act of February 28th, 1891."*

The body of the Act of May 29th, 1924, provides that "unallotted land on Indian Reservations other than lands of the Five Civilized Tribes and of the Osage Reservation *subject to lease for mining purposes for a period of ten years under the proviso to Section 3 of the Act of February 28th, 1891* (Twenty-sixth Statutes at Large, Page 795), may be leased at public auction by the Secretary of the Interior with the consent of the council speaking for such Indians, for oil and gas mining purposes for a period of not to exceed ten years . . . . "

It is thus clear that the lands authorized to be leased under the provisions of the Act of May 29th, 1924, are

the identical lands authorized to be leased by the proviso to Section 3 of the Act of February 28th, 1891.

If the proviso to Section 3 of the Act of February 28th. 1891, has been superseded, so far as concerns the Blackfeet Reservation by the provisions of the Acts of June 30th, 1919, and September 20th, 1922, then, the Act of May 29th, 1924, referring specifically, as it does to the Act of February 28th, 1891, and restricted in its application to lands authorized to be leased thereunder, may not be held applicable. In other words, the Act of May 29th, 1924, relates solely to lands affected by, or subject to lease under, the proviso to Section 3 of the Act of February 28th, 1891. The title to and the body of the Act of May 29th, 1924, restrict the application of that Act to such lands. Since at all times after June 30th, 1919, minerals on the Blackfeet Reservation were subject to lease under the Act of June 30th, 1919, and not the Act of February 28th, 1891, it is clear that the provisions of the Act of May 29th, 1924, do not apply.

4. No consent to taxation by the State, of the oil and gas produced, is given by either the Act of June 30th, 1919, or the Act of September 20th, 1922.

The Supreme Court concludes in its decision that the consent to taxation found in the Act of May 29th, 1924, applies as a general provision to be read in connection with the Act of June 30th, 1919. The effect of this conclusion is to make applicable, by construction, a portion of a statute which is otherwise clearly inapplicable. Petitioner submits that if the lease was given under the provisions of the Act of June 30th, 1919, which superseded, so far as concerns the Blackfeet Tribe, the pro-

viso to the Act of February 28th, 1891, then a consent to taxation of leases upon lands affected by the proviso to the Act of February 28th, 1891, may not; by construction, be inserted in the Act of June 30th, 1919. In short. if the lands here under lease are not lands affected by, and subject to lease under the proviso to Section 3 of the Act of February 28th, 1891, then the consent to taxation found in the Act of May 29th, 1924, may not be applied to oil produced under leases given pursuant to the Act of June 30th, 1919. In the construction of a statute, the intention of the Congress must be deduced from the whole statute and not a part thereof. (Hellmich v. Hellman, 276 U. S. 233, 72 L. Ed. 544; Kohlsaat v. Murphy, 96 U. S. 153, 24 L. Ed. 844).

The consent to taxation found in the Act of May 29th, 1924, relates specifically to oil and gas and other minerals produced "on such lands," that is to say, lands affected by and subject to lease under the proviso to Section 3 of the Act of February 28th, 1891. In connection with the Act of May 29th, 1924, we have, then, an Act restricted, by its title, to unallotted lands on Indian Reservations affected by the proviso to Section 3 of the Act of February 28th, 1891. Exactly the same restriction is found in the body of the Act, both so far as concerns the leasing feature and the tax feature. Where the title to an Act restricts its application, such application may not be extended by construction. (Meese v. Northern Pac. Ry. Co., 127 C. C. A. 622, 211 Fed. 254.)

The provisions of the Act of May 29th, 1924, are not general in their application, but are restricted to the exact lands mentioned therein; otherwise, no purpose

could have been served by the enactment of the Act of March 3rd, 1927 (44 Stat. 1347), providing for the leasing of unallotted lands on executive order reservations and the taxing of oil and gas produced on such leases.

The supposed construction by the Department of the Interior arising from the reference to the Acts of February 28th, 1891, and May 29th, 1924, has been expressly repudiated by that Department. (R. 43.)

The conclusion that the provisions of the Act of May 29th, 1924, apply, can only lead to confusion. Thus, under the decision of the Court, must the Secretary of the Interior now obtain, as a condition precedent, the consent of the tribal council? Is the initial term of the lease limited to ten years? Must the lease be offered at public auction? Or may the Secretary of the Interior prescribe such rules and regulations with respect to the matter as may seem proper under the circumstances, as contemplated by the Act of June 30th, 1919?

It is, therefore, respectfully submitted that the conclusion of the Court that the consent to taxation found in the Act of May 29th, 1924, applies to the lease given under the Act of June 30th, 1919, is erroneous and that a rehearing should be granted herein.

E. K. CHEADLE, JR.,
E. J. McCABE,
H. C. HALL,
Counsel for Petitioner.

CERTIFICATE

The undersigned, E. K. Cheadle, Jr., E. J. McCabe and H. C. Hall, counsel for the petitioner, the British-American Oil Producing Company in the above and foregoing Petition for Rehearing do hereby certify that this Petition for Rehearing is presented in good faith and not for the purposes of delay.

E. K. CHEADLE, JR.,
E. J. McCABE,
H. C. HALL,
Counsel for Petitioner.